

**CITY OF SAN DIEGO
ETHICS COMMISSION**

Office of the Executive Director

MEMORANDUM

DATE: May 7, 2012

TO: Chair and Members of the San Diego Ethics Commission

FROM: Stacey Fulhorst, Executive Director

SUBJECT: Proposed Amendments to Campaign Laws
Docketed for Ethics Commission meeting on May 10, 2012

At the Ethics Commission meeting on April 12, 2012, campaign treasurer April Boling asked the Commission to consider various amendments to the City's campaign laws. A summary of her proposals together with corresponding staff input is as follows:

Proposal No. 1: Eliminate the requirement that contributions be returned if not deposited within 30 business days.

Staff Input: No drafting, enforcement, or other considerations.

Proposal No. 2: Increase the time period to obtain contributor occupation and employer information from 30 business days to 60 calendar days to coincide with state law.

Staff Input: No drafting, enforcement, or other considerations.

Proposal No. 3: Change the font size for "paid for by" disclosures from 12-point type to 6-point type to coincide with the state's sender identification law.

Staff Input: Although Ms. Boling is correct that state law requires the name of the "sender" in 6-point type on the outside of mail, state law also requires a 10-point type disclosure on some types of mass mailings and on other types of printed campaign materials (door hangers, flyers, etc.). It is relevant to note that Los Angeles and San Francisco require "paid for by" disclosures in 12-point type and 14-point type respectively. Moreover, prior to the adoption of the current "paid for by" disclosure requirements in 2004, the Commission staff received numerous complaints from citizens concerning the inability of the public to determine the identity of the party paying for campaign advertising. For

comparison purposes, the Commission may consider the relative effectiveness of different font sizes, as follows:

Paid for by John Smith for Mayor, 123 Elm Street, San Diego (12 point type)

Paid for by John Smith for Mayor, 123 Elm Street, San Diego (10 point type)

Paid for by John Smith for Mayor, 123 Elm Street, San Diego (6 point type)

Paid for by John Smith for Mayor, 123 Elm Street, San Diego (5 point type)

Paid for by John Smith for Mayor, 123 Elm Street, San Diego (4 point type)

Proposal No. 4: Eliminate the “paid for by” requirement on campaign literature not sent via mail.

Staff Input: See input above concerning Proposal No. 3.

Proposal No. 5: Eliminate the requirement that solicitations contain a warning that individual contributors may not be reimbursed by an organization.

Staff Input: This requirement was originally recommended by the City Council to alert well-meaning contributors that they may not seek reimbursement from their employers even if they consider their contributions to be a business expense (so as to avoid unintentional money laundering).

Proposal No. 6: Lift the ban on contributions from sole proprietorships to coincide with federal law that treats sole proprietorships as individuals.

Staff Input: In order to avoid confusion between sole proprietorships and other types of small business ventures, staff recommends including a requirement that the candidate obtain written confirmation from the contributor that the contribution is drawn from the account of a sole proprietorship (owned entirely by the contributor and his/her spouse) before depositing the contribution.

Proposal No. 7: Recommend a higher contribution limit for candidates in citywide races.

Staff Input: The Commission considered this issue in 2008 and ultimately decided the same limit was appropriate for candidates in district and citywide races because citywide candidates have a larger pool of potential donors. In addition, at the Commission meeting on April 20, 2012, UCSD Professor Thad Kousser opined that the recommendation for different political party contribution limits to district and citywide candidates is not analogous to individual limits (there are many potential individual donors but generally only one political party that will consider supporting a candidate).

Proposal No. 8: Eliminate the third pre-election filing.

Staff Input: Current law requires candidates and committees primarily formed to support or oppose candidates to file a third pre-election report on the Friday before the

election, covering the period through the Thursday before the election. This additional disclosure was previously recommended by the Commission in order to address situations in which candidates waited until after the second (and formerly last) pre-election filing period to solicit and accept contributions from individuals associated with special interest groups (such contributions would not be disclosed until after the election). It is relevant to note that Los Angeles requires candidates to file a third pre-election disclosure on the Friday before the election, covering the period through the Wednesday before the election.

In addition to Ms. Boling's recommendation concerning the third pre-election filing, other political treasurers have advised staff that the requirement to disclose outstanding debts is onerous during the final days of the campaign. They explained that disclosing contributions is not difficult because the campaign has all requisite information regarding the contributor before making the deposit (and campaigns are generally eager to deposit contributions). Similarly, disclosing expenditures is fairly straightforward. On the other hand, obtaining all necessary information regarding outstanding debts incurred by a committee's campaign consultant, manager, or staffer can be very problematic during the typically hectic days leading up to an election. As a result, the Commission may wish to consider amendments that would alleviate some of the burdens associated with disclosing accrued expenses, such as allowing committees to amend Schedule F (accrued expenses) within 10 days of an election without penalty.

As I mentioned at the Commission meeting on March 8, 2012, the Commission may also wish to consider extending the third pre-election filing requirements to committees primarily formed to support City ballot measures and to City general purpose recipient committees (which support both City candidates and City ballot measures). If there is a public policy achieved in the disclosure of financial activity during the final weeks leading up to a candidate election, it seems likely that a similar public policy would be achieved with the disclosure of financial activity for ballot measure committees. Similarly, the fact that a committee is "general purpose" does not diminish the need for the public to receive information concerning the committee's financial activities during the weeks leading up to an election.

Additional Issues

The staff would like the Commission to consider amendments to the "paid for by" disclosures required on yard signs and billboards. Currently, the law requiring a "paid for by" disclosure in 12-point type applies to yard signs; however, state law requires the disclosure on some yard signs to appear in a type size equal to 5% of the total height of the sign (similar to billboards). The Commission might therefore want to recommend updates to ECCO to ensure that local law is not less restrictive than state law (which is not permissible). In addition, neither local nor state law includes a definition for "billboard." As a result, the staff is unable to advise candidates and committees what types of large signs (other than a traditional billboard) must include a "paid for by" disclosure. After careful consideration, staff suggests the best option is to recommend

disclosures on billboards as well as other “large forms of advertising” that are greater than a specific size (e.g., 40, 50, or 60 square feet). Traditional billboards range in size from 288 square feet to 672 square feet; mobile billboards range in size from 50 square feet to 86 square feet.

An additional potential disclosure issue concerns the identity of \$50,000 donors in advertisements that support or oppose City candidates. Although the Commission previously indicated it would prefer to “wait and see” if the state adopts pending legislation that would require enhanced disclosure of major donors in candidate and ballot measure advertisements, it is possible that the state will not take any definitive action in the near future (Assembly Bill 1648 is currently with the Appropriations Committee to consider implementation cost concerns raised by the FPPC). If this is the case, or if AB 1648 is voted down, the Commission might wish to consider including this issue with the package of amendments it presents to the Rules Committee in September of 2012 to ensure that candidate advertisements disseminated in connection with the 2014 election cycle include important information regarding major funding sources.

Finally, the Commission previously discussed potential amendments to the City’s Municipal Lobbying Ordinance to require lobbyists, lobbying firms, and organization lobbyists to disclose contributions to, and fundraising activities for, committees primarily formed to support or oppose City candidates. Currently, quarterly disclosure reports must include an itemization of all contributions of \$100 or more to candidates and fundraising efforts on behalf of candidates. In the wake of the *Thalheimer* rulings, a number of committees primarily formed to support or oppose City candidates have been established. These committees are no longer subject to contribution limits or the ban on contributions from organizations. As a result, lobbyists, lobbying firms, and organization lobbyists can now make substantial monetary contributions to these committees and engage in raising substantial funds on their behalf.

Stacey Fulhorst
Executive Director